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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1910 OF 2007

Cosmos Foundation & anr. Petitioners
versus
MCGB and others Respondents

R.M.Nakhwa a/w Y.A.Sakhare for petitioner.
Archana Joshi for MCGB.

CORAM : A.M.KHANWILKAR, J.
DATE : 26th November 2007

PC :

1. Heard counsel for the parties. Rule. Rule made returnable forthwith by consent, as short question is involved. Ms.Archana Joshi waives notice for respondents 1 to 3. Insofar as respondent nos.4 and 5 are concerned, since they are formal parties in respect of the dispute raised in this petition, coupled with the fact that in spite of notice already served they have not chosen to appear, the matter is proceeded ex-parte against them. Suffice it to observe that the order that I propose to pass is in no way adverse to respondent nos.4 and 5.

2. The sole controversy raised in this petition

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is with reference to the communication issued by the Assistant Assessor and Collector, H-West Ward of the office of the Assistant Assessor and Collector, H-West Ward, Bandra (West), Mumbai 400 050 dated 18th July 2007 in response to the letter sent by the petitioners dated 9th February 2007 (which is Exhibit-G, page 43 of the paper book). By this communication, the respondent no.3 has informed the petitioners that the complaint forwarded by it-purported to be under Section 162 of the Mumbai Municipal Corporation Act, cannot be entertained, as the same was filed beyond fifteen days from the date of service of notice. According to the said Officer, the special notice No.T.W.R.117 of 2006-2007 was served on 16th January 2007, whereas, the complaint dated 9th February 2007 was received in his office on 12th February 2007 i.e. beyond fifteen days from the date of service of the special notice.

3. In the present case, however, the Officer has clearly overlooked the fact that the Special Notice dated 13th January 2007 was sent by the Department to the "society" on 16th January 2007. That no notice is served by the Corporation on the petitioners who are the occupiers of the

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concerned premises.

4. It is the case of the petitioners that the society forwarded the said special notice received by it on 16th January 2007, to its members including the petitioners only on 2nd February 2007. In other words, it is only on 2nd February 2007, the petitioners became aware about the existence of the special notice. This stand taken on behalf of the petitioners has not been disputed by the respondents. It necessarily follows that the petitioners acquired knowledge about the existence of special notice only on 2nd February 2007. In the present case, the petitioners have filed the complaint pursuant to the self same special notice on 9th February 2007, which is within seven days from the date of its knowledge.

5. The question is whether the complaint filed by the petitioners (occupiers) is justly thrown out at the threshold by the Officer on the specious reasoning that the same was presented after fifteen days from the date of service of the notice on the society. The bar of limitation of 15 days would have applied to the petitioners if the Department were to serve the special

notice simultaneously on the petitioners herein. That has not been done nor it is the case of the respondents that a public notice in relation to the assessment of the premises in question was or has already been issued as specified in Section 162 of the Act.

6. On plain reading of Section 162 of the Act, therefore, it is obvious that the Corporation cannot non-suit the Occupier at the threshold unless it were to establish that a special notice was simultaneously served even on the occupiers (petitioners) on the 16th of January 2007. Indubitably, the Occupier is entitled to lodge complaint in his own rights. If it is so, it was obligatory to serve the occupier with the special notice. A priori, the occupiers (petitioners) cannot be non-suited on the basis that the notice was already served on the owner in respect of the disputed premises. In the case of the kind brought before this Court, the question of invoking bar of Limitation of fifteen days against the occupiers (petitioners) is completely misplaced. That bar would operate against the concerned owner or occupier who has been served with the notice either by public notice or personal notice, as the case may be.

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7. The Corporation plainly accepts that the special notice was directed to the society and has been served on the society on 16th January 2007 and not the occupiers (petitioners). In other words, the petitioners have not been served with any special notice so far in the capacity of occupiers of the premises. Thus understood, the question of fifteen days limitation period having commenced even against the petitioners on the basis of service of notice on the owner, does not arise. Accordingly, the approach adopted by the Officer in throwing out the complaint of the petitioners at the threshold is untenable.

8. In the circumstances, the present petition ought to succeed. The impugned letter dated 18th July 2007 at Exhibit-G is set aside and instead the Authority is directed to entertain the complaint of the petitioners as if the same has been filed in time and proceed in accordance with law on its own merits. No order as to costs.

(A.M.KHANWILKAR, J.)

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Transcription of Judgement
submitted on : 26th November 2007

For approval :

THE HON'BLE MR.JUSTICE A.M.KHANWILKAR)

To be referred to the reporter or not ?

To be shown to the reporters of the
local news-papers or not?